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REMARKS

I. INTRODUCTION

Claim 5 has been amended. No new matter has been added. Claims 1 - 5, 12 - 14, 16, 17 and 19 - 30 are pending in the present application. In view of the above amendments and the following remarks, it is respectfully submitted that all of the pending claims are allowable.

II. THE CLAIM OBJECTIONS SHOULD BE WITHDRAWN

Claim 5 is objected to for being dependent from claim 3 instead of claim 1. (See 2/20/07 Office Action, p. 2). Claim 5 has been amended to correct this dependency. Accordingly, the objection to claim 5 should be withdrawn.

III. THE 35 U.S.C. § 103(a) REJECTIONS SHOULD BE WITHDRAWN

Claims 1 - 5, 12 - 14, 16, 17 and 19 - 30 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,694,300 to Walker et al. ("Walker") in view of U.S. Patent No. 6,741,968 to Jacoves et al. ("Jacoves"). (See 2/20/07 Office Action, p. 2).

Walker describes a system for providing supplementary product sales as a function of a purchase parameter at a point of sale ("POS") terminal. (See Walker, Abstract). A merchant, by registering with a credit card issuer, can provide offers for supplementary products ("upsells") at the POS terminal of other merchants. (Id. at col. 3, lines 18 - 39). Thus, when a customer uses the credit card at the POS terminal, a central controller connected thereto transmits an upsell product offer to the POS terminal. (Id. at col. 5, lines 14 - 25). The upsell product offer transmitted by the central controller depends upon the purchase parameter (e.g., product purchased, purchase price, date, time of day, etc.). (Id. at col. 5, lines 40 - 61). Depending on the type of upsell product offer and whether the customer accepts it, the central controller may

credit/debit one or more financial accounts specific to the merchant, the customer and/or a further merchant (e.g, manufacturer of upsell product). (Id. at col. 8, lines 42 - 52).

Jacoves describes a fuel rewards system instituted among a store chain which uses a clearinghouse to process information. (See Jacoves, col. 1, lines 56 - 60). A rewards provider dictates all aspects of a rewards program by providing UPC and associated information for discount triggering items to a central office of the store chain. (Id. at col. 17, line 62 - col. 18, line 4). The central office transmits this information to one or more stores that provide a customer with a reward redemption slip when the customer purchases a discount triggering item specified by the rewards provider. (Id. at col. 18, lines 4 - 10). The customer then redeems the reward at a gas station, which may or may not be located at the same point-of-sale terminal as the one where the slip is given. The reward is a discount on gas and when redeemed, the clearinghouse provides an invoice to the manufacturer of each discount triggering item to compensate the gas station. (Id. at col. 4, lines 19 - 40).

Claim 1 recites a method for cross marketing products, comprising the steps of:

establishing a parameter of the cross-marketing relationship by mutual consent of the first and second companies, the parameter including a discount on a second product offered by the second company, the discount contingent upon a condition at least partially satisfied by a purchase of a first product offered for sale by the first company;

at the first company, identifying a straight sale that includes the purchase of the first product by a particular consumer at a first point-of-sale terminal, granting the discount and storing an indication of the purchase of the first product in a database on the server;

at the second company, receiving a request from the particular consumer for the second product, querying the database to determine that the particular consumer has purchased the first product from the first company, providing the

discount on the second product, and updating the database to reflect the providing;
based on the first product being a cross-marketed product, calculating and recording an amount of cross-marketing revenue realized from a predetermined portion of the cost of the straight sale to a marketing fund account in the database;
and

based on the providing of the discount, allocating at least a portion of the cross-marketing revenue and a predetermined portion of the cost of the discount in the fund to reimburse the second company for the discount.

The Examiner asserts that Walker discloses “establishing a parameter of the cross-marketing relationship by mutual consent of the first and second companies,” as recited in claim 1. However, the Applicants note that Walker does not describe or even suggest any relationship involving mutual consent. The upsell merchant specifies the supplementary product, the conditions under which to offer the product, and the price required in exchange for the product. (See Walker, col. 5, lines 17 - 25). Because the upsell merchant is in complete control over the terms in which the supplementary product is offered, there is no possibility for mutual consent.

The Examiner also acknowledges that Walker does not teach or suggest direct communication between two merchants, but goes on to state that it would be obvious to eliminate the use of a credit card company as an intermediary. (See 2/20/07 Office Action, pp. 4 - 5). The role of the credit card company in Walker is purely that of a financial intermediary which has no features of a cross-marketing relationship. Therefore, eliminating the credit card company would still fail to produce a cross-marketing relationship characterized by mutual consent. The upsell merchant would still be in complete control over the terms of the sale of the supplementary product. Thus, it is respectfully submitted that Walker neither discloses nor suggests “establishing a parameter of the cross-marketing relationship by mutual consent of the first and second companies,” as recited in claim 1.

In addition, the recitation of claim 1 clearly states that the recording of cross-marketing

revenue from a predetermined portion of the straight sale is “based on the first product being a cross-marketed product.” Similarly, the allocation of cross-marketing revenue to reimburse the second company is “based on [the second company’s] providing the discount.” Walker only teaches providing payment to the upsell merchant for a sale of the upsell merchant’s own product. This is completely unrelated to the allocation of funds to a cross marketing account. As taught by the specification of the present invention, in a cross-marketing relationship, both merchants contribute to a cross-marketing fund to defray each other’s cost of dispensing merchandise. (*Id.* at p. 5, lines 1 - 7). Because Walker does not teach or suggest a cross-marketing relationship, the calculation of a purchase price as taught by Walker is not based on the supplemental product satisfying the condition of being a cross-marketed product. For the same reasons, the transfer of funds from the first merchant to the upsell merchant is not based on a providing of a discount by the upsell merchant. Rather, Walker explains that a financial account belonging to the first merchant should be debited to reflect a customer’s purchase of a supplemental product offered by the upsell merchant. (*Id.* at col. 10, lines 22 - 46). Since the first merchant physically receives money that was intended to compensate the upsell merchant for providing his own product, the debiting acts as an electronic transfer of funds to the upsell merchant, who is not physically present to receive the proceeds directly from the consumer. Thus, the upsell merchant does not actually provide any discount in furtherance of a cross-marketing relationship, but is making a separate sale of his own product.

The Examiner concedes that Walker does not teach or suggest a marketing fund account, but nevertheless interprets the transfer of money between financial accounts as constituting a marketing fund account based on the assumption that Walker teaches a cross-marketing relationship. (See 2/20/07 Office Action, p. 5). Based on the reasons discussed above, it is respectfully submitted that Walker does not, in fact, teach a cross-marketing relationship and, therefore, neither discloses nor suggests “based on the first product being a cross-marketed product, calculating and recording an amount of cross-marketing revenue realized from a predetermined portion of the cost of the straight sale to a marketing fund account in the database” and “based on the providing of the discount, allocating at least a portion of the cross-marketing

revenue and a predetermined portion of the cost of the discount in the fund to reimburse the second company for the discount,” as recited in claim 1.

It is also respectfully submitted that Jacoves is insufficient to cure the above described deficiencies of Walker. Jacoves describes a system in which a customer may go to a second point-of-sale terminal to redeem a discount that is unilaterally selected by the rewards provider. In contrast to “establishing a parameter of a cross-marketing relationship by mutual consent” of the two companies, Jacoves teaches that the rewards provider selects the products that trigger discounts. (See Jacoves, col. 17, lines 58 - 65). The manufacturer has no control over whether the rewards provider chooses to select the product.

In addition, Jacoves provides no indication or suggestion of “calculating and recording an amount of cross-marketing revenue realized from a predetermined portion of the cost of the straight sale to a marketing fund account.” The reimbursement that Jacoves describes is strictly between the manufacturer and the rewards provider. The store where the product is purchased does not record any cross-marketing revenue from the sale of the product. Neither does the store itself provide the reimbursement. The fact that the manufacturer only reimburses the rewards provider for the face value of the discount itself reveals that the system taught by Jacoves is not in fact, a cross-marketing arrangement. According to claim 1, in addition to compensating the second company with “a predetermined portion of the cost of the discount,” the second company is also compensated by “allocating at least a portion of the cross-marketing revenue.” Jacoves does not provide any such compensation because the manufacturer-provider relationship does not entail driving the customer to each other by providing discounts that can be redeemed at the other company. Therefore, there is no reason to reimburse the rewards provider using a portion of the sale of the discount triggering products.

Based on the reasons discussed above, it is respectfully submitted that claim 1 is allowable and that neither Walker nor Jacoves, either alone or in combination, discloses or suggests “establishing a parameter of the cross-marketing relationship by mutual consent of the

first and second companies” and “calculating and recording an amount of cross-marketing revenue realized from a predetermined portion of the cost of the straight sale to a marketing fund account” and “allocating at least a portion of the cross-marketing revenue and a predetermined portion of the cost of the discount in the fund to reimburse the second company for the discount,” as recited in claim 1. Because claims 2 - 5, 12 and 27 depend from, and, therefore include the limitations of claim 1, it is respectfully submitted that these claims are also allowable.

Claim 13 recites “establishing a parameter of the cross-marketing relationship by mutual consent of the first and second companies” and “based on a providing of the discount to the consumer, depositing a predetermined amount of money into a marketing fund account maintained at the server for the benefit of the second company in at least partial compensation for providing the discount” and “wherein the amount of money deposited into the marketing fund account includes a predetermined percentage of revenue realized from the purchase of the first product and a predetermined percentage of the cost of the discount.”

The Examiner has stated that claim 13 recites language which purports to state an intended use or purpose. (See 2/20/07 Office Action, p. 5). The Applicants respectfully disagree with this characterization of the recited limitations. Claim 13 recites that the marketing fund account is “maintained at the server for the benefit of the second company in at least partial compensation for providing the discount.” This recitation does not suggest an intended purpose, but rather describes the nature of the cross-marketing relationship between the first and second companies. The maintenance of the marketing fund for the benefit of the second company is necessary in order to compensate the second company. Based on these reasons, and the reasons discussed above with reference to claim 1, it is respectfully submitted that claim 13 is allowable and that neither Walker nor Jacoves, either alone or in combination, discloses or suggests “establishing a parameter of the cross-marketing relationship by mutual consent of the first and second companies” and “based on a providing of the discount to the consumer, depositing a predetermined amount of money into a marketing fund account maintained at the server for the benefit of the second company in at least partial compensation for providing the discount” and

“wherein the amount of money deposited into the marketing fund account includes a predetermined percentage of revenue realized from the purchase of the first product and a predetermined percentage of the cost of the discount,” as recited in claim 13. Because claims 14 and 28 depend from, and, therefore includes the limitations of claim 13, it is respectfully submitted that this claim is also allowable.

Claim 16 recites “establishing a parameter of the cross-marketing relationship by mutual consent of the first and second departments” and “based on a providing of the discount to the consumer, depositing a predetermined amount of money into a marketing fund account maintained on the server for the benefit of the second department in at least partial compensation for accepting the discount” and “wherein the money deposited into the marketing fund account for the benefit of the second department amounts to a predetermined percentage of revenue realized from the purchase of the first product and a predetermined percentage of the cost of the discount.” It is respectfully submitted that claim 16 is allowable for at least the reasons discussed above with reference to claim 1. Because claim 29 depends from, and, therefore includes the limitations of claim 16, it is respectfully submitted that this claim is also allowable.

Claim 17 recites “establishing a parameter of the cross-marketing relationship by mutual consent of the first and second companies” and “recording an amount of cross-marketing revenue realized from the straight sale to a marketing fund account, wherein the marketing fund account is structured to defray the second company’s costs in dispensing products in conjunction with a first promotional discount value earned by the purchase of the first company’s products, and the first company’s costs in dispensing products in conjunction with a second promotional discount value earned by the purchase of the second company’s products.” It is respectfully submitted that claim 17 is allowable for at least the reasons discussed above with reference to claim 1. Because claims 19 - 26 and 30 depend from, and, therefore include the limitations of claim 17, it is respectfully submitted that these claims are also allowable.

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CONCLUSION

In light of the foregoing, the Applicants respectfully submit that all of the pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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